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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,743	12/03/2001	Kurtis Lee Brown	15804	9141
23556	7590	01/08/2004		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956				
			EXAMINER SALVATORE, LYNDIA	
			ART UNIT 1771	PAPER NUMBER

DATE MAILED: 01/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/005,743

Applicant(s)

BROWN ET AL.

Examiner

Lynda M Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment and accompanying remarks filed October 16<sup>th</sup>, 2003 have been fully considered and entered. Claim 15 has been added as requested. Applicant's remarks regarding the claim rejections set forth in last Office Action are not found persuasive of patentability for reasons set forth herein below.

### ***Response to Arguments***

#### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-7 and 9-11 stand rejected under 35 U.S.C. 102(b) as being anticipated by Bishop et al., US 5,486,166 as set forth in section 1 of the last Office Action. Additionally, newly added claim 15 is also rejected under 35 U.S.C. 102(b) as being anticipated by Bishop et al., US 5,486,166.

Applicant argues that Bishop et al., fails to teach single component helically crimped fibers and that one of ordinary skill in the art would recognize that "zig zag or saw tooth" crimp is referring to single component fibers and that the "helically or spirally" crimped fibers is referring to multi-component fibers. These arguments are not found persuasive on the grounds that it is the position of the Examiner that the disclosure of Bishop et al., encompasses all of the limitations set forth in claims 1-7, 9-11 and 15. Though not exemplified in the examples, helically or spirally crimped fibers made from a single fiber polymer are not precluded from the invention of Bishop et al. To reiterate, the non-woven may comprise helically crimped single

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component staple or continuous fibers made from various polyolefin (i.e., polypropylene or polyethylene), polyester, or polyamide materials (Column 5,45-60, Column 6, 11-16 and 39-50).

As such, it is the position of the Examiner that such a disclosure cannot be ignored and that one of ordinary skill in the art would recognize that a helically crimped single component fiber is well within the scope of the Bishop et al., invention.

With regard to claim 15, the limitation of "differential shear induced helically crimped fiber" constitutes a method limitation not germane to the final product and will not be given patentable weight at this time. Since the prior art meets the chemical and structural limitations of the instant invention, the presence of said method limitation in the non-woven product claim does not otherwise patentably distinguish over the final product article of Bishop et al. The burden is shifted to the Applicant to evidence the contrary.

4. Claims 1-4,11,13 and 14 stand rejected under 35 U.S.C. 102(b) as being anticipated by Stokes et al., US 5,858,515 as set forth in section 2 of the last Office Action. Additionally, newly added claim 15 is also rejected under 35 U.S.C. 102(b) as being anticipated by Stokes et al., US 5,858,515.

Applicant argues that the patent issued to Stokes et al., does not teach single component helically crimped fibers and only discusses bi-component latent helically crimped fibers. These arguments are not found persuasive on the grounds that it is the position of the Examiner that the disclosure of Stokes et al., encompasses all of the limitations set forth in claims 1-4, 11,13,14 and 15. Though not exemplified in the examples, helically or spirally crimped fibers made from a single fiber polymer are not precluded from the invention of Stokes et al. To reiterate, the patent issued to Stokes et al., teaches a pattern unbonded non-woven web suitable for use as loop

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fastening material for hook and loop fastening systems (Title and Abstract). The fibers used to make the non-woven may be crimped single component fibers (Column 7, 3-6). Suitable materials used to make the fibers include polyolefins, polyesters, polyamides, and polyurethanes (Column 6, 65-67). As such, it is the position of the Examiner that such a disclosure cannot be ignored and that one of ordinary skill in the art would recognize that a helically crimped single component fiber is well within the scope of the Stokes et al., invention.

With regard to claim 15, the limitation of "differential shear induced helically crimped fiber" constitutes a method limitation not germane to the final product and will not be given patentable weight at this time. Since the prior art meets the chemical and structural limitations of the instant invention, the presence of said method limitation in the non-woven product claim does not otherwise patentably distinguish over the final product article of Bishop et al. The burden is shifted to the Applicant to evidence the contrary.

5. Claims 1-11 stand rejected under 35 U.S.C. 102(e) as being anticipated by Stokes et al., US 6,528,439. Additionally, newly added claim 15 is also rejected under 35 U.S.C. 102(b) as being anticipated by Stokes et al., US 6,528,439.

Applicant argues that the patent issued to Stokes et al., does not teach single component helically crimped fibers and only discusses bi-component latent helically crimped fibers. These arguments are not found persuasive on the grounds that it is the position of the Examiner that the disclosure of Stokes et al., encompasses all of the limitations set forth in claims 1-11 and 15. Though not exemplified in the examples, helically or spirally crimped fibers made from a single fiber polymer are not precluded from the invention of Stokes et al. To reiterate, the patent issued to Stokes et al., teaches a non-woven web comprising crimped polymeric fibers suitable for use

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as towels, wipes, diapers, and absorbent personal care articles (Title, Abstract, and Column 15-21). Stokes et al., teaches crimping the fibers into a helical arrangement to increase the bulk, loftness, softness, and drapability of the non-woven (Column 4, 30-35). The crimped fiber may be in the form of spunbonded, meltblown, or staple fibers made from a single polymeric component (Column 5, 25-32). Suitable polymers include polypropylene (Column 7, 10-17). As such, it is the position of the Examiner that such a disclosure cannot be ignored and that one of ordinary skill in the art would recognize that a helically crimped single component fiber is well within the scope of the Stokes et al., invention.

With regard to claim 15, the limitation of "differential shear induced helically crimped fiber" constitutes a method limitation not germane to the final product and will not be given patentable weight at this time. Since the prior art meets the chemical and structural limitations of the instant invention, the presence of said method limitation in the non-woven product claim does not otherwise patentably distinguish over the final product article of Bishop et al. The burden is shifted to the Applicant to evidence the contrary.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claim 12 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al., US 5,486,166, or Stokes et al., US 5,858,515, or Stokes et al., US 6,528,439 in view of Akers, US 5,607,550 as set forth in section 5 of the last Office Action.

Applicant argues that no motivation exists to combine references to form an obvious rejection over the prior art of Stokes et al., '515, '439 or Bishop et al. This argument is not found

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persuasive on the grounds that since the Examiner has maintained the argument that the prior art of record teaches single component helically crimped fibers proper motivation exists to form the helically crimped fibrous non-woven structures of Bishop et al., Stokes et al., '515 or '439 with the super-absorbent polymeric fibers of Akers.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-8, 10,11 and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Shelly et al., US 2002/0089079 A1.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

The patent application issued to Shelly et al., teaches a non-woven web comprising single component helically crimped thermoplastic fibers (Section 0044). Suitable fiber forming polymers include polypropylene (Section 0045). Shelly et al., teaches bonding the continuous helically crimped fibers by hydroentanglement, needling, through-air-bonding, and thermal point

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bonding (Claim 6, Section 0051 and 0039). The helically crimped fibers are suitable for use as the loop portions of hook and loop fasteners, and other end uses such as diapers and medical garments (Section 0007 and 0040).

With regard to claim 15, the limitation of "differential shear induced helically crimped fiber" constitutes a method limitation not germane to the final product and will not be given patentable weight at this time. Since the prior art meets the chemical and structural limitations of the instant invention, the presence of said method limitation in the non-woven product claim does not otherwise patentably distinguish over the final product article of Bishop et al. The burden is shifted to the Applicant to evidence the contrary.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 703-305-4070. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

December 28, 2003

ls 

  
CHERYL A. JUSKA  
PRIMARY EXAMINER